



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1998

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0307

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112117.

The Texas Department of Public Safety (the "department") received a request for information regarding motor vehicle accidents involving vehicles driven by State Highway Patrol Troopers. You state that some of the requested information will be released to the requestor. However, you contend that the remaining information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of documents.¹

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

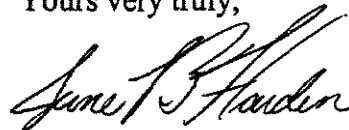
The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The department must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the department is currently involved in litigation as a named defendant in the following cases: *Capps, v. Texas*, Cause No. 31875, 6th Judicial District Court of Fannin County, Texas; *Garcia v. Texas Department of Public Safety*, Cause No. 97-03-0768-CV, 79th Judicial District Court of Brooks County, Texas; *Ramos v. Texas Department of Public Safety*, Cause No. 97-47537, 280th Judicial District Court of Harris County, Texas; and *Brown v. Texas Department of Public Safety*, Cause No. 34818, 66th Judicial District Court of Hill County, Texas.² You also state that each of these cases contains information responsive to the request, but the release of this information would be detrimental to the department's litigation interests. After reviewing the arguments, we find that litigation is pending. We also conclude that the documents you have submitted relate to the pending cases, and may be withheld.

Generally, however, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

²In a separate correspondence to this office, the requestor asserts that the department is no longer a party in Cause No. 34818. This situation raises a question of fact. This office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). However, if the department no longer has a litigation interest in Cause No. 34818, the requested information pertaining to this case is not excepted under section 552.103.

JBH/glg

Ref.: ID# 112117

Enclosures: Submitted documents

cc: Mr. Paul Schorn
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(w/o enclosures)